



## Annex A – Countryside Council for Wales

### Introduction

This is annex A to advice note 11: Working with public bodies in the infrastructure planning process. Advice note 11 covers many of the generic points of interaction relevant to the Planning Inspectorate and the Countryside Council for Wales (CCW).

However, there are some specific points that are not addressed in the advice note which require clarification and these are dealt with in this annex, including:

- Specific roles to be played by the Planning Inspectorate and the relevant public body
- Specific high level agreements or arrangements and relevant contact points
- A list of relevant consents, licences or authorisations that apply, and considerations relating to how those interact with the development consent process.

This document will be updated periodically to ensure the information remains relevant in view of organisational or legislative changes affecting the Planning Inspectorate and CCW.

The Planning Inspectorate welcomes feedback on the content of this annex.

### CCW - Statutory roles, functions and powers

The CCW is the Welsh Government's (WG) statutory adviser on sustaining natural beauty, wildlife and the opportunity for outdoor enjoyment in Wales and its inshore waters.

The basic duties of CCW are set out in sections 130 and 131 of the Environmental Protection Act 1990 and include the duty to advise local planning authorities and other bodies on a wide range of developments and operations that might impact on nature conservation and countryside matters. CCW is therefore required to participate in and provide advice on a wide range of planning, consenting and development control processes.

CCW's regulatory, licensing and advisory powers and functions derive (inter alia) from a number of key Acts, and regulations, including: -

- The Environmental Protection Act 1990 (as amended by the Natural Environment and Rural Communities Act 2006), which sets out the nature conservation and general functions of the CCW.



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- The Habitats Regulations<sup>1</sup> which relate to European Protected Species (EPS), species and habitat protection through Special Areas of Conservation (SACs) and protection of birds through Special Protection Areas (SPAs). Together, these types of protected areas are known as Natura 2000 or European sites.
- The Wildlife and Countryside Act 1981, (as amended by the Countryside and Rights of Way Act 2000), which includes powers to designate and protect species and Sites of Special Scientific Interest (SSSI).
- The Ramsar Convention. Ramsar sites, covering wetlands of international significance are designated by WAG under the Ramsar Convention 1971<sup>2</sup>. All Ramsar sites in Wales are also SSSI, which means that they have legal protection and guidelines for management. As a matter of government policy, Ramsar Sites are afforded the same degree of protection as European Sites.
- Environment Act 1995
- Marine and Coastal Access Act 2009
- The Planning Act 2008 (the 2008 Act).

CCW also has other statutory duties, responsibilities and powers. The most relevant in respect of nationally significant major infrastructure projects (NSIPs) are summarised in Table 1 below.

**Table 1**

Related primary and secondary legislation	Natural beauty / countryside	Nature conservation	Specific statutory duties *
National Parks and Access to the Countryside Act 1949	✓		Statutory consultee with duty to advise planning authorities on development proposals in National Parks. Duty to make recommendations to Welsh Ministers on any development proposals prejudicial to National Parks. Statutory consultee on the development of land affecting areas of outstanding natural beauty (AONBs).
Countryside Act 1968	✓		Duty to inform the Welsh Ministers/Local Planning Authorities of the effect on natural beauty...of developments of any class likely to be prejudicial thereto. Duty to have regard to the desirability of conserving the natural beauty and amenity of the countryside.
Local Government Act 1972 and 1974	✓	✓	Statutory consultee - required to respond to statutory consultations by a National Park Authority.
Electricity Act 1989	✓	✓	Statutory consultee to license holders.
Water Industry Act 1991	✓	✓	Statutory consultee to Welsh Ministers in relation to the

<sup>1</sup> Conservation of Habitats and Species Regulations 2010 as amended by the Conservation of Habitats and Species (Amendment) Regulations 2011

<sup>2</sup> See s.77 of the Countryside and Rights of Way Act 2000 for the definition of Ramsar site



			appointment and regulation of any water undertaker whose area is wholly or mainly in Wales.
Water Resources Act 1991	✓	✓	Statutory consultee to the Environment Agency prior to their carrying out/authorising works which may affect areas of land in Wales of special interest.
Environment Act 1995	✓	✓	Statutory consultee in relation to environmental conservation. Under section 8 (3-4). The Environment Agency must notify CCW before carrying out/authorising any work/operations likely to destroy/damage/prejudice the natural heritage.
Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000)	✓	✓	CCW's advice should be sought by developers prior to them carrying out works on or affecting a SSSI and in the case of owners and occupiers there is a requirement to notify and gain consent, prior to them carrying out works on or affecting a SSSI (s.28e, s.28h and s.28i).
Marine and Coastal Access Act 2009	✓	✓	s.313 amends the Environmental Protection Act and clarifies CCW's role as it relates to Wales and the marine environment. Requirement to inform/consult CCW where public authority functions might hinder achievement of conservation objectives for a marine conservation zone (MCZ).
Environmental Protection Act 1990	✓	✓	Under sections 130 and 131- CCW to advise local planning authorities and other bodies on...developments/operations that might impact on nature conservation and countryside matters.
Environmental Damage (Prevention and Remediation) (Wales) Regulations 2008	✓		CCW, as an enforcing authority in relation to environmental damage to protected species, natural habitats and sites of special scientific interest on land in general and also where a local authority grants an Integrated Pollution Prevention and Control license. CCW has powers to enforce/serve notice to prevent environmental damage and further environmental damage. These powers might apply at all stages of the development consent process under the 2008 Act.
Harbours Act 1964	✓	✓	CCW as the relevant conservation body has to be consulted.



\* Where CCW has specific statutory duties deriving from the legislation listed above that may be triggered by consultation carried out by the IPC, or by developers and others, then these are indicated in Table 1 above. These statutory duties also are detailed further in the section Roles, below.

In addition, CCW is required to take account of and act on European legislation by virtue of, amongst other matters, its status as the 'appropriate nature conservation body' for Wales. In the context of the 2008 Act regime, CCW's main 'European' derived responsibilities relate to the Environmental Impact Assessment (EIA) Directive (85/337/EEC as amended) and the 'Habitats Directive' (92/43/EEC) as transposed into UK Law. These statutory functions are detailed further in the sections on EIA and the Habitats Regulations.

## Geographical extent of CCW's roles and responsibilities

The spatial extent of CCW's remit and responsibilities is dependent on the statutory context.

- Terrestrial natural heritage effects impacts within Wales, including cross-border nature conservation and natural heritage impacts e.g. possible visual impacts in Wales from proposed infrastructure that would, if built, be sited in England but would affect the natural beauty and/or natural heritage and environment of Wales<sup>3</sup>;
- Marine nature conservation impacts within 12 nautical miles of the Welsh coastline, including cross-border nature conservation impacts<sup>4</sup> where CCW will lead in their duties, including under the Habitats Regulations, with advice provided by the Joint Nature Conservation Committee (JNCC)
- Beyond 12 nautical miles of the Welsh coastline, CCW will *support* JNCC's duties under the Habitats Regulations.
- There may also be circumstances where, dependent on the nature and location of the proposal, CCW will have a joint duty with Natural England, primarily in respect of cross-border European Sites including the Dee and Severn Estuaries, the River Dee and River Wye.

## Roles of the CCW under the 2008 Act regime

The roles and responsibilities of the CCW under the 2008 Act regime fall into two main categories;

- statutory consultee - as a prescribed consultee by developers under s.42 of the 2008 Act or by the Secretary of State as a Consultation Body in relation to any EIA scoping consultation or as a Nature Conservation Body under the Habitat Regulations Assessment (HRA) process.
- consenting body/authority .

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<sup>3</sup> CCW is the statutory adviser to the Assembly Government on sustaining natural beauty, wildlife and the opportunity for outdoor recreation throughout Wales and its inshore waters.

<sup>4</sup> CCW's remit extends beyond Welsh territorial waters; e.g. possible visual impacts in Wales from proposed offshore infrastructure built beyond Welsh territorial seas would be considered by CCW or possible far field effects of noise or where there are connections to infrastructure in Welsh waters that also lies beyond Welsh territorial seas.



## Consultee/consultations

CCW is a prescribed consultee and, in relation to accepted applications, would be a statutory party under the 2008 Act and related secondary legislation (see Table 1). The Planning Inspectorate encourages early liaison at the pre-application stage between developers and CCW where a proposed development is in or close to Wales.

Section 42 consultation allows CCW to identify to developers what they consider to be the key issues regarding a proposed project. Developers have a duty to take account of responses to consultation and publicity<sup>5</sup>.

There is nothing in the 2008 Act or related secondary legislation that would prevent developers from informally consulting CCW or for CCW to raise issues with developers outside of the formal consultation process at the pre-application stage, and CCW would encourage such informal consultation.

## Consenting body/authority

CCW has power to grant authorisations, licenses and consents (consents etc.) under a number of enactments relating to nature conservation in Wales.

Table 2 sets out those consents which may be included within a Development Consent Order (DCO) with the consent of CCW (under s.150 Planning Act 2008).<sup>6</sup> These are consents that would normally be granted by CCW. CCW would generally not agree to these consents being included within a development consent order but will consider this on a case by case basis. Developers wishing to invoke these provisions in the Planning Act should contact CCW at an early stage, and set out in detail the reasons why they would wish a particular consent to be included in the DCO.

In addition, some secondary legislation places a requirement on owner occupiers and competent authorities to seek CCW advice prior to carrying out works within a SSSI or affecting a SSSI. Such consultations (and CCW's response to them) may be termed 'assents' e.g. An assent under section 28i of the Wildlife and Countryside Act 1981 as amended.

## EIA

The legal basis for the EIA process in the UK derives from the EIA Directive of the European Union (85/337/EEC as amended) (the EIA Directive). The EIA Directive is transposed into UK legislation via a series of regulations which relate to specific consenting regimes. Including:

- The Infrastructure Planning (EIA) Regulations 2009 (as amended), which specifically relates to the 2008 Act regime.
- The Town and Country Planning (EIA) (England and Wales) Regulations 1999
- Electricity Works (EIA) Regulations 2000

<sup>5</sup> Section 49 of the Planning Act 2008

<sup>6</sup> These consents are listed in the Schedule to the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010. Part 1 of this Schedule lists those consents that are relevant to both England and Wales, whilst part 2 lists those that only relate to Wales.



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- Pipeline Works (EIA) (England and Wales) Regulations 2000
- The Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011.

CCW has a statutory role as a consultation body under these EIA Regulations.

Early pre-application consultation, whether formal or informal, is particularly important where there may be significant effects on the environment, natural heritage and cultural heritage of Wales. This would assist developers in preparing applications that are more likely to be supported by CCW during the examination of accepted applications, and the Examining Authority in considering the implications of proposals during examination within the statutory time period

It should be noted that many of the licenses/consents granted by CCW and/or advised on by CCW relate to scientific investigation and research. In such cases, licenses may need to be obtained for the purposes of undertaking EIA/HRA and should be discussed with CCW at the 'scoping' stage of such assessments.

Part 1 of this advice note, and Planning Inspectorate advice notes 3, 7 and 9, set out detailed advice on the implications of Environmental Impact Assessment under the 2008 Act regime.

## Habitats Regulations

Under the Habitats Regulations, CCW is a nature conservation body<sup>7</sup> and, where it is a decision-maker, a competent authority<sup>8</sup>. The Habitats Regulations place a responsibility on competent authorities to consult the appropriate nature conservation bodies in the assessment of the implications of an application for European Sites and require CCW to provide advice and assistance or make representations, to any competent authority on any matter which relates to Wales. In addition to its lead role as consultee for proposed developments sited within Wales, CCW must also be consulted in regard to assessments of proposed developments outside Wales but which may have implications for European Sites wholly or partially within Wales.

Early pre-application consultation, whether formal or informal, is particularly important where a European and/or Ramsar site may be affected by a proposed development so as to enable the competent authority to make an appropriate assessment of the implications for the site, if required under the Habitats Regulations after an application has been accepted for examination.

## Relevant reports advice and guidance

CCW have produced reports, guidance and advice which are relevant to developments, Habitats Regulations assessment and environmental impact assessment in Wales. Some of this is available from [www.ccw.gov.uk](http://www.ccw.gov.uk) or on request from CCW Headquarters.

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<sup>7</sup> Regulation 5 of the Habitats Regulations

<sup>8</sup> Regulation 7 of the Habitats Regulations



## New site designation

CCW will alert the Planning Inspectorate at the earliest appropriate time to any proposals to create new or extend existing designated sites. For example, SACs, SPAs, Ramsar sites, Sites of Special Scientific Interest and AONB within CCW's jurisdiction and other designation of areas where CCW has an advisory role or powers; e.g. Marine Conservation Zones.

**Table 2**

Item	Relevant consent, licence or authorisation	Other information
16	<p>A licence under Regulation 53 of the Conservation of Habitats and Species Regulations 2010.</p> <p>The purposes for which CCW can issue licences are:</p> <p>(a) scientific or educational purposes</p> <p>(b) ringing or marking, or examining any ring or mark on, wild animals</p> <p>(c) conserving wild animals or wild plants or introducing them to particular areas</p> <p>(d) protecting any zoological or botanical collection.</p>	<p>Grants licences for certain purposes. Licences for other purposes are also granted by WG.</p>
18	<p>An authorisation pursuant to byelaws made under section 20 of the National Parks and Access to the Countryside Act 1949</p>	<p>Certain byelaws for protection of nature reserves.</p>
19	<p>Certain licences under the Deer Act 1991</p> <p>A licence may be granted to any person by the CCW allowing said person to remove deer from one area to another or of taking deer alive for scientific or educational purposes.</p> <p>(3) The acts permitted are:</p> <p>(a) using any net, trap, stupefying drug or muscle-relaxing agent of a type authorised by the licence</p> <p>(b) using any missile carrying or containing such stupefying drug or muscle-relaxing agent and discharging any such missile by any means authorised by the licence.</p>	<p>CCW power to grant certain licences only. Licences are also granted by WG.</p>



20	<p>A licence under section 10 of the Protection of Badgers Act 1992</p> <p>A licence may be granted to any person for the following purposes:</p> <p>(a)for scientific or educational purposes or for the conservation of badgers:</p> <p>(i)to kill or take, within an area specified in the licence by any means so specified, or to sell, or to have in his possession, any number of badgers so specified; or</p> <p>(ii)to interfere with any badger sett within an area specified in the licence by any means so specified</p> <p>(b)for the purpose of any zoological gardens or collection specified in the licence, to take within an area specified in the licence by any means so specified, or to sell, or to have in his possession, any number of badgers so specified</p> <p>(c)for the purpose of ringing and marking, to take badgers within an area specified in the licence, to mark such badgers or to attach to them any ring, tag or other marking device as specified in the licence</p> <p>(d)for the purpose of any development as defined in section 55(1) of the Town and Country Planning Act 1990, to interfere with a badger sett within an area specified in the licence by any means so specified</p> <p>(e)for the purpose of the preservation, or archaeological investigation, of a monument scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979, to interfere with a badger sett within an area specified in the licence by any means so specified</p> <p>(f )for the purpose of investigating whether any offence has been committed or gathering evidence in connection with proceedings before any court, to</p>	<p>Power to grant licences. Licences for other purposes are also granted by WG.</p>
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	interfere with a badger sett within an area specified in the licence by any means so specified.	
21	<p>A licence under section 16 of the Wildlife and Countryside Act 1981</p> <p>CCW can issue licences for the following purposes</p> <p><b>In relation to birds:</b></p> <p>(a)for scientific, research or educational purposes</p> <p>(b)for the purpose of ringing or marking, or examining any ring or mark on, wild birds</p> <p>(c)for the purpose of conserving wild birds</p> <p>(ca)for the purposes of the re-population of an area with, or the re-introduction into an area of, wild birds, including any breeding necessary for those purposes</p> <p>(cb)for the purpose of conserving flora or fauna</p> <p>(d)for the purpose of protecting any collection of wild birds</p> <p>(h)for the purpose of photography.</p> <p><b>In respect of animals and plants:</b></p> <p>a)for scientific or educational purposes</p> <p>(b)for the purpose of ringing or marking, or examining any ring or mark on, wild animals</p> <p>(c)for the purpose of conserving wild animals or wild plants or introducing them to particular areas</p> <p>(d)for the purpose of protecting any zoological or botanical collection</p> <p>(e) for the purpose of photography.</p>	<p>Power to grant certain licences only.</p> <p>Licences for other purposes are also granted by WG.</p>



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